IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CRIMINAL APPLICATION No 974 of 2003

For Approval and Signature:

HON'BLE MR.JUSTICE A.L.DAVE

==========

1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

DHIRAJLAL NAGJIBHAI PATEL

Versus

STATE OF GUJARAT

Appearance:

1. Special Criminal Application No. 974 of 2003

MR AMAR DAVE for Petitioner No. 1

MRS. MANISHA LAVKUMAR, LD. ADDL.PUBLIC PROSECUTOR for Respondent No. 1

MR SAMIR J. DAVE, ADDL.CENTRAL GOVT. STANDING COUNSEL for Respondent No. 2

CORAM : HON'BLE MR.JUSTICE A.L.DAVE

Date of decision: 03/10/2003

ORAL JUDGEMENT

Rule. Mrs. Manisha Lavkumar, learned Additional Public Prosecutor waives service for the respondent No.1 State and Mr. Samir J. Dave, Additional Central Government Standing Counsel for respondent No.2. At the

request of the learned Counsel for the parties, matter is taken up for final hearing today.

2. The controversy spins around the question whether the learned Chief Judicial Magistrate, Surat could have imposed a condition, while enlarging the petitioner on bail, to deposit twelve and a half percent of the "excise duty evasion" within 3 months from the date of release of the applicant, which has subsequently been reduced to 5% by the learned Sessions Judge, Surat vide his order dated 19.9.2003 in the Criminal Revision Application No. 263 of 2003 filed by the petitioner.

3. A similar question had arisen before this Court in Criminal Revision Application No. 455 of 2003, which was decided on 24th Sept. 2003 along with Criminal Misc. Application No. 7367 of 2003 filed by the Department, wherein this Court has taken a view, after considering provisions contained in Section 441 and 445 of the Criminal Procedure Code, and after taking into consideration the following judgements that such condition cannot be imposed:-

1. Keshav Narayan Vs. State of Bihar, reported in AIR 1985 SC 1666;

2. Sandeep Jain Vs. N.C.T of Delhi, reported in AIR 2000 SC 714;

3. Moti Ram Vs. State of M.P. reported in (1978) 4 SCC 47;

4. Balbir Singh Chib Vs. Sanjay Dave, reported in AIR 2000 SC 3563 (1);

5. N. Sasikala Vs. Enforcement Officer, Enforcement Directorate, Madras, reported in 1997 Criminal Law Journal 2120;

6. C. Prakash Agarwal Vs. State of A.P, reported in 2000 Criminal Law Journal 4310;

7. Alluvdin Vs. Inspector of Police, Vandhavasi Police Station, reported in 2001 Criminal Law Journal 2672;

8. M.R. Narayanan Vs. State, reported in 2003 Criminal Law Journal 1472.

4. The above view was taken on the basis that the question whether there was actual duty evasion or not is

yet to be adjudicated upon; that bail proceedings cannot be used for recovery of such dues and imposition of such condition would be unsustainable and harsh.

5. Since the question posed before this Court is already covered by the above judgement, this Special Criminal Application is allowed. The condition No.2 imposed by learned Chief Judicial Magistrate, Surat in his order dated 2.5.2003 in F.No. DRI/SRV/INV-5-2003, is hereby set aside while confirming the bail granted to the petitioner with the rest of the conditions. The order dated 19.9.2003 of the learned Sessions Judge, Surat in Criminal Revision Application No. 263 of 2003 modifying the condition No.2 imposed by the learned Chief Judicial Magistrate and ordering to deposit 5% of the alleged amount of evaded duty with the Central Excise Department is also hereby set-aside. Rule is made absolute. Direct service permitted.

(A.L.Dave, J.)

*/Mohandas